* **HIGH COURT OF DELHI : NEW DELHI**

\+ **Writ Petition (Civil) No. 16893 of 2006**

Judgment reserved on: September 25, 2007

% Judgment delivered on: November 01, 2007

Indian Metal & Ferro Alloys Ltd.
having its registered office at
IMFA Building
Bomikhal, Rasulgarh
Bhubaneswar, Orissa

Also at:

IMFA Building
B-4/147, Safdarjung Enclave
New Delhi ...Petitioner

Through Mr. Krishnan Venugopal with
Mr. Siddhartha, Mr. Pawan Sharma &
Mr. Harpreet S. Popli, Advs.

Versus

1. Designated Authority
Ministry of Commerce & Industry
Udyog Bhavan
New Delhi – 110 011

2. Department of Revenue
Ministry of Finance
North Block
New Delhi – 110 011 ...Respondents

Through Mr. P.P. Malhotra, Additional Solicitor General with Mr. Suresh Kait, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

There is no major dispute between the parties on the facts of the case. The real dispute is with regard to the interpretation of the anti-dumping provisions of the Customs Tariff Act, 1975 (for short the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (for short the Rules). The question that we are called upon to answer is whether the Designated Authority (Respondent No. 1) appointed under Rule 3 of the Rules, if called upon to do so, is obliged

to carry out what is commonly known as a "sunset review" or can it decline to do so.

2. In our opinion, if it is called upon to do so, the Designated Authority is under an obligation to conduct a sunset review and the Central Government (Respondent No. 2) must consider the recommendation made by the Designated Authority and take a decision thereon.

The facts:

3. The broad facts of the case, as have been pointed out to us during the course of hearing on 24th and 25th September, 2007 are that the Petitioner and others jointly petitioned the Designated Authority (Respondent No. 1), appointed under Rule 3 of the Rules, alleging that ferro alloys originating in or exported, inter alia, from China and Russia are being dumped in India. It was requested that the Designated Authority may initiate investigations into the allegations and thereafter impose anti-dumping duties under the Act.

4. As a result of the joint petition, the Designated Authority,

acting under Rule 5 of the Rules, decided to initiate anti-dumping investigations concerning the import of ferro silicon originating in or exported from Russia and China. Consequently, an Initiation Notification dated 5th June, 2000 was issued to determine the existence, degree and effect of the alleged dumping of the subject goods originating in or exported into India from the subject countries.

5. After conducting its investigations, the Designated Authority notified its Preliminary Findings under Rule 12 of the Rules on 16th November, 2000. The findings are to the following effect:

- Ferro silicon originating in or exported from Russia and China has been exported into India below the normal value resulting in dumping.
- The domestic industry has suffered injury caused by imports from China and Russia.

6. On the basis of its findings, the Designated Authority proposed to the Central Government to impose provisional anti-dumping duty on ferro silicon originating in or exported from China and

Russia, pending a final determination. Accepting the preliminary findings of the Designated Authority, the Central Government (Respondent No. 2), acting under Rule 13 of the Rules, issued a Notification dated 26th December, 2000 imposing anti-dumping duty of Rs. 33,120/- per metric tonne on the imports of ferro silicon from Russia and China. The anti-dumping duty was to remain in force till 25th June, 2001.

7. The Designated Authority then conducted further investigations into the allegations made by the Petitioner and others and after following the procedure (on which there is no dispute) gave its Final Findings under Rule 17 of the Rules, which were then notified on 28th May, 2001. The Designated Authority confirmed its Preliminary Findings given on 16th November, 2000 and recommended the definitive imposition of anti-dumping duty on all imports of ferro silicon originating from or exported from Russia and China. The recommended duty was USD 764/- per metric tonne.

8. Accepting the final findings of the Designated Authority, the

Central Government issued a Notification dated 25th June, 2001 under Rule 18 of the Rules levying anti-dumping duty on the imports, as proposed, with effect from the date of imposition of the provisional duty, that is, 26th December, 2000. In terms of Section 9A(5) of the Act, the anti-dumping duty was to remain in force, unless revoked earlier, for a period of five years from the date of imposition, that is, 26th December, 2000.

9. On 5th January, 2004 Respondent No. 2 (the Central Government) issued a Trade Notice with reference to Section 9A(5) of the Act read with Rule 23 of the Rules. It was stated in the Notice that henceforth the Director General of Anti-Dumping & Allied Duties would consider initiating a sunset review of anti-dumping duty on receiving an appropriate request six months before the date of expiry of the anti-dumping duty. The delay in making a request could be condoned if there was sufficient justification for it.

10. The Petitioner made a request to the Central Government on 18th July, 2005 for a sunset review. The Petitioner also gave its reasons

for the request. The prima facie delay on the part of the Petitioners appears to have been condoned by the Central Government since no issue was joined in this regard before us nor was such an issue raised by the Central Government. On the contrary, the Central Government, by a letter dated 17th November, 2005 requested the Petitioner to supply some details, evidence and information in support of its case.

11. By a letter dated 13th December, 2005 the Petitioner gave to the Designated Authority all the further necessary information that it had. The relevant material appears to have been considered by the Designated Authority who then passed an order on 21st December, 2005 declining to initiate a sunset review of the anti-dumping duty. What was actually said is:

> "Your application has been carefully examined by the Authority and after examining the information submitted by you, it has been considered appropriate not to review the anti-dumping duty imposed on Ferro Silicon originating in or exported from Russia and China PR."

12. Feeling aggrieved by the order dated 21st December, 2005, the Petitioner preferred a writ petition being CW No. 24646 of 2005 in this Court in which it was prayed that the impugned order be quashed

since the Designated Authority is obliged to conduct a sunset review and the Central Government can then take a decision thereon. When the writ petition came up for hearing on 26th December, 2005 learned counsel for the Respondents stated that the matter would be considered by the Central Government and an appropriate order passed.

13. On 20th July, 2006 the Central Government passed an order, which is now impugned in the writ petition that we are dealing with. On 15th September, 2006 the Petitioner withdrew CW No.24646 of 2005 and on 13th November, 2006 filed the present writ petition praying for setting aside the order dated 20th July, 2006.

14. In the impugned order the Central Government concluded that the Designated Authority's earlier "decision not to review the anti-dumping duty is well-founded and there exist no grounds to take a contrary view. It has, therefore, been decided by the Central Government that initiation of review for continuance of anti-dumping duty on imports of Ferro-silicon for Russia and China PR is not required."

The contentions:

15. Learned counsel for the Petitioner raised two contentions before us. Firstly, it was submitted that under the provisions of the Act and the Rules, the Designated Authority is obliged to conduct a sunset review, and secondly that on merits, the decision of the Central Government is incorrect and ought to be set aside. Since we are in agreement with learned counsel on his first contention, we are not examining the merits of the decision taken by the Central Government and, indeed, we have reservations whether we can at all do so.

16. The two key provisions that came up for discussion before us are Section 9A(5) of the Act and Rule 23 of the Rules. They read as follows:

> **"9A. Anti-dumping duty on dumped articles.** –
>
> (1) to (4) xxx xxx xxx
>
> (5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:
>
> Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may,

from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) to (8) xxx xxx xxx

23. **Review.** – (1) The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review."

17. Rule 5 (which is not applicable to a review) deals with the initiation of investigations – a step, it may be recalled, taken by the Designated Authority by issuing an Initiation Notification on 5th June, 2000. Rule 6 and the subsequent rules deal with the principles governing investigations (mutatis mutandis), determination of normal

value, export price and margin of dumping, determination of injury, final findings of the Designated Authority and levy of duty – rules that are essentially procedural.

18. However, what is more important in this context is Rule 4(1)(e)of the Rules. Rule 4(1) reads as follows:

> "4. **Duties of the designated authority.** – (1) It shall be the duty of the designated authority in accordance with these rules-
>
> (a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;
>
> (b) to identify the article liable for anti-dumping duty;
>
> (c) to submit its findings, provisional or otherwise to Central Government as to -
>
> (i) normal value, export price and the margin of dumping in relation to the article under investigation, and
>
> (ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries.
>
> (d) to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, and the date of commencement of such duty; and

(e) to review the need for continuance of anti-dumping duty."

19. According to the learned Additional Solicitor General, neither the Act nor the Rules mention a sunset review. It is, therefore, contended that there is no provision for a sunset review, nor is any procedure laid down for a sunset review.

A sunset review:

20. The concept of a sunset review has been recognized by the Supreme Court. In ***Rishiroop Polymers (P) Ltd. v. Designated Authority & Others, (2006) 4 SCC 303*** the Supreme Court considered the scope of Section 9A(5) of the Act and observed as follows:

> "Under Section 9-A(5), the said initial imposition of anti-dumping duty is ordinarily contemplated to be continued and remain in effect for a full period of five years, at the end of which it would be subject to Sunset Review, the possible consequence of which would be the extension of the operation of the period of anti-dumping duty for another period of five years. This is subject to the provisions of sub-rule (1) of Rule 23 of the Anti-Dumping Rules, under which the Designated Authority is empowered to review the anti-dumping duty imposed from time to time. Having regard to the scheme of the abovementioned provisions of the statute, once anti-dumping duty has been initially imposed, it would be ordinarily continued for five years unless on a review it is found by the Designated Authority that there has been such a significant change in the facts and circumstances, that it is considered necessary

> either to withdraw or modify appropriately the anti-dumping duty which has been imposed. It is, therefore, clear that unless the Designated Authority *suo motu* or the applicant for review is in a position to establish clearly that there has been a significant change in the facts and circumstances relating to each of the basic requirements or conditions precedent for imposing duty, the finding given by the Designated Authority at the time of initial imposition of anti-dumping duty must be considered to continue to hold the field."

21. Learned counsel for the Petitioner drew our attention to a decision rendered by the Appellate Body of the World Trade Organization in ***United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (AB-2003-5 decided on 28th November, 2003)*** in which India was the Third Participant. The question in that appeal related to "a complaint by Japan against the United States regarding the continuation of anti-dumping duties on certain corrosion-resistant carbon steel flat products from Japan following the conduct of a five-year, or "sunset", review of those duties." This is being mentioned to show that the concept of a sunset review or a review of the continuation of anti-dumping duties at the end of the initial period of five years is not a concept that is alien to the Indian legal system – and it hardly matters if

there is no specific mention of such a review in the Act or the Rules. Consequently, a 'review' mentioned in the Act and the Rules must, where the context so requires, have reference to both a mid-term and a sunset review.

Mandate for a sunset review:

22. Rule 23 of the Rules has to be read and appreciated in the context of Rule 4(1)(e). What these two rules lay down is the statutory duty of the Designated Authority "to review the need for continuance of anti-dumping duty". The procedure for carrying out that review is prescribed in the various rules mentioned in Rule 23(3). The alternative contention of the learned Additional Solicitor General that Rule 23 has limited application, in as much as it does not concern itself with a sunset review, is also untenable in view of the broad statutory duty on the Designated Authority "to review the need for continuance of anti-dumping duty" – the word 'continuance' has reference both to a mid-term review and to a (sunset) review. Were it not so, acceptance of the restrictive interpretation given by the learned Additional Solicitor General would mean that even though the concept of a sunset review is recognized, neither the Act nor the Rules provide for a procedure for

carrying out a sunset review - a situation which is surely not intended either by Parliament or the Central Government.

23. More importantly, the substantive part of Section 9A(5) clearly mandates that anti-dumping duty shall cease to have effect on the expiry of five years from the date of imposition (unless revoked earlier). The Central Government may, however, extend the period of five years if (in a review) it is of the opinion that "the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury". Two important pre-requisites are postulated by the first proviso, namely,

- A review being conducted, and
- Thereafter the formation of an opinion (by the Central Government) on the basis of that review that the cessation of anti-dumping duty would lead to "continuation or recurrence of dumping and injury".

24. Who is to conduct the review? It could be argued, though that does not arise for consideration, that the Central Government may itself conduct the review suo motu. It could also be argued that in view

of Rule 4(1)(e) and Rule 23 of the Rules, the review is to be conducted by the Designated Authority, which can make a recommendation to the Central Government for the withdrawal of anti-dumping duty if there is no justification for its continued imposition. As would be seen a little later, both contentions are valid.

25. What is really the need for conducting a review? There are three reasons: the first is given by the Supreme Court, the second by the first proviso to Section 9A(5) of the Act and the third given by treaties to which India is a signatory.

26. Firstly, in ***Reliance Industries v. Designated Authority, 2006 (10) SCC 368*** the Supreme Court observed that the purpose of Section 9A of the Act is to "maintain a level playing field and prevent dumping, while allowing for healthy competition. The purpose is not protectionism in the classical sense … … but to prevent unfair trade practices." A little earlier in the same decision, it was observed that the purpose of Section 9A of the Act is:

> "… … that our industries which had been built up after independence with great difficulties must not be allowed to

> be destroyed by unfair competition of some foreign companies. Dumping is a well-known method of unfair competition which is adopted by the foreign companies. This is done by selling goods at a very low price for some time so that the domestic industries cannot compete and are thereby destroyed, and after such destruction has taken place, prices are again raised."

These observation of the Supreme Court give the raison d'etre for the concerned authorities to carry out a sunset review.

27. Secondly, the first proviso to Section 9A(5) of the Act casts an obligation on the Central Government to ensure that for the protection of the domestic industry (for the reasons given by the Supreme Court) withdrawal of anti-dumping duty should not lead to continuation or recurrence of dumping as well injury to the domestic industry. In other words, the Central Government has to ensure that the status quo ante is not restored, for that would then mean that the Designated Authority would have to conduct, all over again, a fresh investigation under Rule 5 of the Rules and the subsequent statutory procedures would also have to be repeated. It is, therefore, not only to protect the domestic industry but to avoid repetitive exercises that a review is mandated by the Act and the Rules.

28. The key words in Section 9A(5) of the Act are contained in the first proviso thereto, namely, "the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury". It is possible that imposition of anti-dumping duty may control the problem, insofar as the domestic industry is concerned, during the five-year period when the anti-dumping duty is exigible, but the problem may recur after the anti-dumping duty is withdrawn. If this is coupled with injury to the domestic industry, then the anti-dumping duty should continue. It is for this reason that a proper assessment, through a review, is necessary to determine whether anti-dumping duty should continue or not.

29. In so far as international obligations are concerned, Article VI Clause 1 of the General Agreement on Tariffs and Trade, 1947 (GATT) recognizes that dumping, "by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry." Clause 2 of the same Article provides:

> "In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product."

Significantly, Article VI of GATT does not provide for any period for the levy or imposition of anti-dumping duty. However, the subsequent Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Implementation Agreement) deals with this aspect in Article 11 thereof.

30. Article 11.1, 11.2 and 11.3 of the Implementation Agreement read as follows:

> "11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.
>
> 11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-

> dumping duty is no longer warranted, it shall be terminated immediately.
>
> 11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review."

31. Article 11.1 provides that an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. Article 11.2 deals, inter alia, with a review for the need to continue the imposition of anti-dumping duty, either suo motu by the authorities concerned or on a request by an interested party which submits positive information substantiating the need for a review. Article 11.3 provides that definitive anti-dumping duty shall be terminated on the expiry of five years (subject to a review postulated by Article 11.2) unless the authorities determine on a suo motu review or on the basis of a duly substantiated request of the

domestic industry that the expiry of the duty "would be likely to lead to continuation or recurrence of dumping and injury." In other words, a review is necessary, by the authorities suo motu or on a request made to the appropriate authorities to determine whether the anti-dumping duty should continue or not and whether withdrawal of the duty would result in recurrence of dumping.

32. Therefore, our conclusion on the first part of the issue before us is that there is a well-recognized and accepted concept of a sunset review; that there is a statutory requirement of a sunset review recognized both by the Act and the Rules; the sunset review may be conducted by the concerned authorities suo motu or an application made by the domestic industry.

Is a sunset review mandatory:

33. The final issue is whether the law mandates a sunset review, if a request is so made by an aggrieved domestic industry. Given the view expressed by the Supreme Court in ***Reliance Industries***, it is difficult to answer the question in the negative. In this regard, it is also necessary to ask the question: is it possible for the Central Government

to conclude, without any review, that withdrawal of the anti-dumping duty would not lead to continuation or recurrence of dumping and injury to the domestic industry? Surely, the answer to this must be in the negative. At worst, at least a perfunctory review would have to be carried out by the Central Government before forming an opinion on the necessity of continuing, or not continuing, with the anti-dumping duty. The Rules, however, mandate that the review should not be perfunctory (and advisedly so) but should be meaningful, purposive and necessarily elaborate, and it with this intention that Rule 23(3) of the Rules has been enacted, by the Central Government itself. It must be appreciated that the rationale for introducing anti-dumping duties is the protection of the domestic industry and this protection must not be taken lightly because dumping can very easily destroy the fabric of our policy of industrialization and in a given situation destroy our domestic industry.

34. It is one thing to say that a sunset review may result in a decision not to continue the anti-dumping duty and another thing to say that a sunset review is not required to be carried out. Unfortunately, the stand taken by the Central Government in its counter affidavit is to the

latter effect.

35. There are two aspects to a sunset review. It may be on the initiative of the concerned authorities (suo motu sunset review) or on a request made by the domestic industry. In the present case, we are not concerned with a suo motu review and, therefore, we make no comment on the parameters laid down for such a review. However, in so far as a request is concerned, it must be made by or on behalf of the domestic industry and it cannot be casual or based on perfunctory material – it must be a duly substantiated request (as mentioned in Article 11.3 of the Implementation Agreement). Indeed, even the counter affidavit highlights the necessity of a duly substantiated request. However, what the counter affidavit seems to suggest is that the request made in the present case was not 'duly substantiated' and that is why it was rejected. Unfortunately, that is not what the Designated Authority states in its rejection letter dated 21st December, 2005, the relevant extract of which has been quoted by us earlier. The order dated 20th July, 2006 passed by the Central Government is, no doubt, far more elaborate, but that rejects on merits the 'initiation of review' and even that does not seem to have

been passed in conformity with the procedures laid down in Rule 23(3) read in conjunction with the other Rules. In other words, a two stage procedure seems to have been introduced by the Respondents – first, taking a decision whether a sunset review should at all be initiated and secondly, if such review is decided to be undertaken then deciding on merits if the anti-dumping duty requires to be continued. The contention is that the request for a sunset review in the instant case has been rejected by the Designated Authority at the first stage itself. Therefore, the question of following the procedure mentioned above for taking a decision on merits did not arise and, in any event there is nothing according to the learned Additional Solicitor General that necessitates following the procedure laid down in Rule 23 of the Rule.

36. The contention of the learned Additional Solicitor General really begs the question, how does anyone judge whether the application should be entertained or is 'duly substantiated'? It is only to arrive at a decision on this that an elaborate procedure has been laid down in Rule 23 of the Rules, otherwise (it is possible) that what is actually a 'duly substantiated' application may be arbitrarily rejected at a preliminary

stage without a speaking order as has been done by the Designated Authority in this case. Even otherwise, there is no warrant for introducing a two stage procedure as has been done by the Respondents. What the law requires is that a sunset review has necessarily to be conducted – it may fail on merits because the claim is not duly substantiated – and that review has to be conducted in accordance with Rules 23 of the Rules.

37. It appears that this issue had arisen before the Respondents on an earlier occasion and the advice of the Ministry of Law was sought. The question framed for the consideration of the Ministry was:

> "Whether a request filed by the domestic industry for initiation of Sunset review can be rejected without calling for information from interested parties by initiating a review as provided for in Section 9A(5) of the Customs Tariff Act?"

38. The answer given by the Ministry of Law was to the following effect:

> "As regards the second issue it may be stated that since the anti dumping duty imposed is likely to effect the rights of certain parties, in that event it may not be legally permissible to dispose of a representation/request filed by the domestic industry for initiation of Sunset Review

> without calling for information from the interested parties. The duty case on the Designated Authority is a statutory duty and hence the Rules of Natural Justice demand that where a person is likely to be affected by any action of an authority, that person needs to be heard before a lis is adjudicated. The Department itself has referred to CEGAT Order No. 34/2000 dated 18.8.2000 in Iso Butile Benzene case [since reported as ***Vinati Organics Ltd. v. Designated Authority, 2001 (127) ELT 629 (Tri – Delhi)***] wherein the CEGAT in the pen ultimate para has observed that the Central Government has to form an opinion as to whether discontinuance of anti dumping duty will create a situation wherein injury to domestic industry may recur or not. These observations would seem to imply that the finding should be arrived by the designated authority only after due notice to the concerned parties and after providing them due opportunity to be heard and thereafter forming its subjective opinion as to whether a possible injury may be caused or threat of injury in case of discontinuation of anti dumping duty."

In the counter affidavit filed by the Respondents, it has been stated that the opinion of the Law Ministry is "still under examination".

39. In this context, we may add only two more reasons that suggest that a sunset review is mandatory. Firstly, the Trade Notice dated 5th January, 2004 lays down a time frame within which a request should be made for continuing with the anti-dumping duty. Secondly, even Article 11.3 of the Implementation Agreement mentions that a suo

motu initiative or a duly substantiated request should be made within a reasonable period of time prior to the termination of the period of five years for which the definitive anti-dumping duty is imposed. More significantly, this Article also says that, "The duty shall remain in force pending the outcome of such a review." The cumulative effect of this is that a sunset review is required to be conducted within a limited time frame and if it is not concluded by then, the anti-dumping duty levied shall remain in force for a period of one year more in terms of the second proviso to Section 9A(5) of the Act. However, in a case like the instant one where even that period has run out, and the sunset review has not concluded, some other interim arrangement has to be put in place till the conclusion of such review. These requirements, in our opinion, point to the mandatory nature of a sunset review.

Conclusion and relief:

40. Therefore, in view of our discussion we hold:

(a) A sunset review is mandatory and the contention of the Respondents to the contrary is rejected.

(b) A sunset review is required to be conducted in accordance with the procedure laid down in Rule 23 of the Rules.

(c) The order dated 20th July, 2006 passed by the Central Government is liable to be quashed and we do so.

41. As a result of our conclusions, we direct the Respondents to reconsider the request of the Petitioner taking into account their letter dated 18th July, 2005, their response to the Respondents letter dated 17th November, 2005 and their letter dated 13th December, 2005. The request of the Petitioners should be considered in accordance with Rule 23 of Rules. We do not lay down any time frame for the Respondents to take a decision but would, naturally, expect them to do so expeditiously.

42. We are conscious that setting the clock back may cause some commercial difficulties to the importers of ferro-silicon originating from or exported from Russia and China PR. We, therefore, direct that with effect from two months after the date of our decision (that is from 1st January, 2008) the Respondents will ensure that all imports of ferro-silicon originating from or exported from Russia and China PR are cleared on a provisional basis till the sunset review is completed by the Respondents and a final decision taken.

43. The writ petition is allowed on the above terms. No costs.

Madan B. Lokur, J

November 01, 2007 **S. Muralidhar, J**
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Certified that the corrected copy of the judgment has been transmitted in the main Server.